IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

OP.No. 25222 of 2000(S)

PETITIONERS:
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1. BABU,
S/O.ANTONY, AGED 32 YEARS,
RESIDING AT CHERAYANKANDATH,
MULLASSERY P.O., CHAVAKKADU TALUK,
THRISSUR DISTRICT,
SECRETARY,'JANAKEEYA SAHAYA VEDI'.

2. BIJU P.H. @ BIJU SREELAKOM,
S/O.HARIDAS, AGED 32 YEARS,
SREELAKOM, THAZHAPPU,
PARAYAKKADU P.O., CHERTHALA,
ALAPPUZHA DISTRICT.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM.

2. SECRETARY, MINISTRY OF EDUCATION,
GOVERNMENT OF KERALA, TRIVANDRUM.

3. PRESIDENT, ALL KERALA PRIVATE SCHOOL
MANAGERS ASSOCIATION, TRIVANDRUM.

ADDL.R4 IMPLEADED:

4. REV.DR.PHILIP,
MANAGER OF ST.THOMAS BOYS HIGH SCHOOL AND
ST.MARY'S GIRLS HIGH SCHOOL, KOZHENCHERRY.

ADDL.R4 IS IMPLEADED AS PER ORDER DATED 20.11.2000 IN
C.M.P.NO.50848/2000.

ADDL.R4 BY ADV. SRI.P.HARIDAS
ADDL.ADVOCATE GENERAL SRI.VENGAJOOR K. CHANDRASEKHARAN NAIR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, ALONG WITH OP NO. 30281 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. Nos. 25222 & 30281 OF 2000

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Dated this the 8th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioners in these Original Petitions are public spirited citizens and also tax payers. In these Public Interest Litigations, the petitioners seek the following reliefs:

> *"i) Issue a writ of certiorari to quash Section 11 of Kerala Education Act as ultravires of the Constitution violating Articles 16(1), 14, 19(1)(g), 21, 38(1) and 38(2) and 39 of the Constitution.*
>
> *ii) Issue a writ of mandamus directing the 1st and 2nd respondents to entrust the selection of teachers of aided schools to Public Service Commission.*
>
> *iii) Issue a declaration declaring that the aided School managers are not entitled to appoint the aided school teachers as it is unconstitutional.*
>
> *iv) Issue such other reliefs that this Hon'ble Court deems fit and proper."*

2. A perusal of the reliefs sought for in these Original Petitions would clearly indicate that the petitioners are requesting this court to strike down Section 11 of the Kerala Education Act as violative of Articles 16(1), 14, 19(1)(g) 38 (1) and (2) and 39 of the Constitution of India. The ancillary relief sought for in these Original Petitions, is to direct the 1st and 2nd respondents in these Original Petitions to entrust the selection of teachers of

aided schools to Public Service Commission and lastly, to declare that the aided school managers are not entitled to appoint aided school teachers as it is unconstitutional.

3. For the very same reliefs, O.P.No. 22024 of 2000 had been filed by one "Samatha Law Society".

4. A Division Bench of this court, after a detailed discussion of the entire issue that was posed and argued, was pleased to dispose of the aforesaid Original Petition and also connected matters. While doing so, this court has observed in paragraphs 24 and 25 as under:

> *"24. But we do not think that we need straight away strike down Section 11 of the Act as it now stands as arbitrary and as violative of Articles 14, 19 or 21 of the Constitution. We think, especially in the absence of a proper counter affidavit which meets the very serious allegations regarding the irregularities made in these Original Petitions that the State should be given an opportunity to consider this serious aspect in the interests of ensuring quality education and to prevent charges of corruption to consider the question for itself and to take a decision thereon leaving it to the petitioners to approach this court if they feel aggrieved by the inaction of the State to take any remedial measures or by any decision that may be taken by the State in that regard. Of course, it is not normally the part of the duty of this court to direct what Legislation must be brought forward by the State. That is a matter for the Legislature. When serious constitutional aspects are highlighted and the pernicious practices are alleged, it is necessary for the State to consider whether a tightening up of the process is called for in the circumstances. But this court cannot obviously direct the State to restore the original Section 11 of the Kerala Education*

Act to the statute book. But in the light of the facts disclosed it appears to us that it is the plain duty of this court to draw the attention of the Government to the evil projected by the petitioners and to consider whether remedial measures are not warranted in such circumstances. Of course, whether the old Section 11 of the Act should be re-enacted replacing the present Section 11 of the Act is a matter for the Legislature or Government to consider. But we think that in exercise of our jurisdiction under Article 226 of the Constitution of India, it is permissible, even necessary to direct the State to bestow its attention to the misuse or abuse of the power conferred by Section 11 of the Act on Managers of aided schools and also to consider whether steps should not be taken to avert the evil or to ensure that quality is not sacrificed at the altar of avarice and self interest. At last it is necessary for the Government to look into this aspect in detail in the interests of education and maintaining the proper standards in education.

25. In this view, we dispose of these Original Petitions and the Writ Appeal by directing the State of Kerala to consider whether any suitable changes should be brought about in the scheme of Sections 9 and 11 of the Act as it now stands with particular reference to the scheme as it was originally envisaged and in fact enacted after the Supreme Court had given its opinion that the scheme was constitutionally valid and did not offend Article 30 (1) of the Constitution of India. It is necessary for the Government to consider whether the evil sought to be averted by enacting the Kerala Education Act has been achieved by enacting Section 11 in its present form and if it is necessary, to do what is necessary to make the scheme more beneficial to the State and to the citizens seeking quality education."

5. The petitioners are before us seeking the very same reliefs

sought for in O.P.No. 22024 of 2000 and connected matters.

6. In our view, the prayers sought for in these Original Petitions filed by the petitioners need not be considered by us, since the facts and legal issues involved in these Original Petitions are the same as those which were considered and decided by a Division Bench of this Court in O.P. No. 22024 of 2000 and connected matters. In that view of the matter we dispose of these Original Petitions as having become unnecessary/infructuous.

7. Pending Civil Miscellaneous Petitions are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.

H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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O.P. Nos. 25222 & 30281 OF 2000

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Dated this the 8th October, 2007

J U D G M E N T